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DONALD M. JACKSON, Tenant/Petitioner, v. BENITO SPRINGER, Housing Provider/Respondent	Case No.: RH-TP-06-28725

FINAL ORDER

I. Introduction

On July 25, 2006, Tenant/Petitioner Donald M. Jackson filed Tenant Petition ("TP") 28,725 with the Rental Accommodations and Conversion Division ("RACD") alleging violations of the Rental Housing Act of 1985 (the "Act") with respect to his housing accommodation at 2851 Minnesota Avenue, S.E., apartment No. 1. Tenant and Housing Provider/Respondent, Benito Springer, appeared at a hearing on January 24, 2007, in which they testified and submitted documentary evidence. Based on the entire record I find that Tenant has not proven his case and that this case is therefore dismissed with prejudice.

II. Background

In May, 2006, when he was served with a Notice of Increase in Rent Charged, Tenant had occupied his apartment for about ten years. His rent, at that time, was $306 per month. The previous Housing Provider had attempted to raise his rent but Mr. Jackson stated that he filed an appeal with the RACD and obtained an order restoring the rent to $306 per month.

Tenant's present Housing Provider, Mr. Springer, served a Notice of Increase in Rent Charged on May 26, 2006, increasing Tenant's rent by $494 per month to $800 per month effective July 1, 2006. Petitioner's Exhibit ("PX") 100. The notice attributed the increase to Section 205(a) of the Rental Housing Act, described as "Registration and Coverage."[1]

On July 25, 2006, Mr. Jackson filed his tenant petition with the Rent Administrator, naming Benito Springer as the housing provider. The tenant petition complained that: (1) The rent increase was larger than the amount of increase which was allowed by the Rental Housing Act. (2) The rent increase was taken while the rental unit was not in substantial compliance with the D.C. Housing Regulations. (3) Retaliatory action had been directed against Tenant by Housing Provider for exercising his rights in violation of the Rental Housing Act. Specifically, the tenant petition noted that the Notice of Increase in Rent Charged failed to explain the justification for the rent increase and that a DCRA housing inspection found violations of the housing code in Tenant's apartment in February, 2006.

The tenant petition was forwarded to the Office of Administrative Hearings for hearing. This administrative court issued a Case Management Order scheduling the hearing for January 24, 2007.

III. Analysis of the Evidence

A. Tenant's Claim that the Rent Increase Was Larger Than That Allowed Under the Rental Housing Act

Housing providers whose housing accommodations are subject to the Rent Stabilization Provisions of the Rental Housing Act may increase rent in their rental units only by implementing a permissible increase in the unit's rent ceiling that has been properly taken and

[1] A table of the exhibits offered and received in evidence is set forth in the appendix.

perfected. *See Sawyer Prop. Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 104 (D.C. 2005). The Housing Regulations require that a notice that implements a rent adjustment in a unit subject to the Rent Stabilization Provisions shall state "[t]he date and authorization for the rent ceiling adjustment . . . ." 14 DCMR 4205.4(a)(4).

The tenant petition correctly noted that the Notice of Increase in Rent Charged here, PX 100, did not state any authorization for a rent ceiling adjustment. Instead, it referred to Section 205(a) of the Act, which covers properties that may be exempt from rent control. Specifically, the Act provides that the Rent Stabilization Program, D.C. Official Code §§ 42-3502.05(f) through 42-3502.19 (except § 42-3502.17) "shall apply to each rental unit in the District *except*" [emphasis added]:

> (3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:
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> (A) The housing accommodation is owned by not more than 4 natural persons;
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> (B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;
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> (C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation . . . .

D.C. Official Code § 42-3502.05(a)(3).

Here Housing Provider complied with these requirements for this "Small Landlord Exemption." Housing Provider filed a Registration/Claim of Exemption Form, claiming

exemption from the Rent Stabilization Provisions of the Rental Housing Act on the grounds that the housing accommodation contained four or fewer rental units. Respondent's Exhibit ("RX") 200. The exemption form was signed by Mr. Springer, who testified that he was the sole owner of the property and that the housing accommodation here was the only rental property that he owned in the District of Columbia.

The party claiming an exemption from the Rental Housing Act has the burden of proving the exemption. *Goodman v. D.C. Rental Hous. Comm'n,* 573 A.2d 1293, 1297 (D.C. 1990). I find that Housing Provider has sustained his burden and conclude that the housing accommodation here was exempt from the Rent Stabilization provisions of the Rental Housing Act. It follows that Housing Provider's rent increase was not governed or restricted by the Act. *See generally Hanson v. D.C. Rental Hous. Comm'n*, 584 A.2d 592, 595–97 (D.C. 1991) (discussing the Small Landlord Exemption).

B. Tenant's Claim that a Rent Increase Was Taken While the Unit Was Not in Substantial Compliance with the D.C. Housing Regulations.

Mr. Jackson testified that, at the time the Notice of Increase in Rent Charged was served, his apartment was subject to violations of the Housing Regulations. He submitted into evidence a Housing Violation Notice, No. 84524-30, dated February 9, 2006. PX 101. The Notice cited two violations of the Housing Regulations: The window in the living room did not fit reasonably well within the frame, a violation of 14 DCMR 705.2. The window frame in the bathroom had rotten, broken, or missing parts, a violation of 14 DCMR 705.6. The notice required abatement within 30 days and listed potential fines of $550.

The Rental Housing Act provides that a Housing Provider may not implement a rent increase unless the rental unit and common elements are in "substantial compliance with the

housing regulations." D.C. Official Code 42-3502.07(a)(2)(A). But this prohibition is part of the Rent Stabilization Program in the Act. *See* D.C. Official Code § 42-3502.05(a). Because Housing Provider is exempt from these provisions, the existence of housing code violations would not constitute a violation of the Rental Housing Act as alleged in the tenant petition.

A further reason to dismiss this charge is that Tenant did not sustain his burden of proof. The Housing Violation Notice that Tenant submitted into evidence, PX 101, was based on an inspection on February 9, 2006. To counter this evidence, Housing Provider submitted into evidence a notice of abatement, dated May 1, 2006, confirming that the two violations had been abated. RX 201.

Mr. Jackson acknowledged that Housing Provider installed new vinyl windows after the Housing Violation Notice was issued. But he asserted that the frames were never repaired. This testimony was controverted by Mr. Springer, who testified he had the building inspected by a home inspector and made the repairs to the windows that the inspector recommended. A letter to Mr. Jackson, requesting access to the apartment in order to install the windows was received in evidence. RX 202. Mr. Springer asserted that the Mr. Jackson's apartment did not require further repairs after the new windows were installed.

On balance, I find that, even if Housing Provider were not exempt from the Rent Stabilization Program, Tenant failed to sustain his burden of proving that his rental unit was not in substantial compliance with the Housing Regulations when Housing Provider implemented the rent increase. Housing Provider presented documentary evidence from the agency that issued the Housing Violation Notice that the two violations that Tenant proved had been abated by the time the rent increase was implemented.

C. Tenant's Claim of Retaliation

Tenant's final claim in the tenant petition is that "Retaliatory action has been directed against me/us by my/our Housing Provider, manager or other agent for exercising our rights in violation of section 502 of the Rental Housing Emergency [sic] Act of 1985." The Rental Housing Act of 1985 prohibits a housing provider from taking "any retaliatory action against any Tenants who exercise any right conferred upon the Tenants by this chapter." Retaliatory action includes "any action or proceeding not otherwise permitted by law which would unlawfully increase rent . . . . D.C. Official Code § 42-3505.02(a). *See also* 14 DCMR 4303.3 ("Retaliatory action shall include . . . (b) Any action which would unlawfully increase rent . . . ."). The evidence here shows that Housing Provider increased Tenant's rent. But the evidence does not show that this act was retaliatory.

Unlike claims involving the propriety of rent increases, claims of retaliation are not subject to the Small Landlord Exemption of D.C. Official Code § 42-3502.05(a)(3). The exemption applies only to sections of the Rental Housing Act covering rent stabilization provisions. The prohibition on retaliation, in Section 502 of the act, is not subject to the exemption.

Notwithstanding, Housing Provider's exempt status here is critical to the resolution of Tenant's claim of retaliation because it bears on the lawfulness of the rent increase. I have found that the rent increase here was lawful. In turn, the legitimacy of the rent increase is strong evidence that the Housing Provider did not impose it as a retaliatory act.

I reach this conclusion after careful consideration of the presumption established by the Rental Housing Act that a rent increase is a retaliatory act if the housing provider implements it within six months after the tenant engages in certain specified activities:

> (b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action the tenant:
>
> (1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;
> (2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;

D.C. Official Code § 42-3505.02(b).

Although the record here establishes that Housing Provider implemented a rent increase within six months of when Tenant complained of violations of the Housing Regulations and within six months of when a District Government official cited Housing Provider for violations of the Housing Regulations, the record does not establish a presumption of retaliatory action. Tenant acknowledged that he made no written complaints to Housing Provider, and his oral complaints were not witnessed. Nor was there any evidence in the record that Tenant contacted District Government officials to complain about the housing code violations in his apartment. Mr. Jackson did not testify that the inspection of his apartment was initiated in response to his complaints. The Housing Violation Notice, PX 101, does not indicate that the inspection arose out of a tenant complaint. But even if Mr. Jackson had complained of housing code violations to

District officials, his complaints were not witnessed or in writing, so they would not establish a presumption of retaliation. In the absence of any evidence in the record that the preconditions for the Act's presumption of retaliation existed, I cannot invoke the presumption as a matter of law.

Moreover, even if the presumption were applicable here, I conclude that Housing Provider has presented clear and convincing evidence sufficient to rebut the presumption. Clear and convincing evidence has been described by the District of Columbia Court of Appeals as "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *Lumpkins v. CSL Locksmith, LLC*, 911 A.2d 418, 426, n. 7 (D.C. 2006) (quoting *In re Dortch,* 860 A.2d 346, 358 (D.C. 2004)). Here, Mr. Springer testified, without contradiction, that he imposed significant rent increases on all the tenants, not just Mr. Jackson, because he wanted to upgrade the property and increase the rents to a level where the property could maintain itself. He submitted documentary proof that the housing code violations in Tenant's apartment had been abated prior to the rent increase. RX 201. And he established that the housing accommodation was exempt from rent control, so that Housing Provider had no reason to think that the rent increase was unlawful. These factors, in the absence of any direct evidence of retaliatory motive, are sufficient to rebut a presumption of retaliation under the clear and convincing standard.

III. Findings of Fact

1. From March, 1996 through December 31, 2006, Tenant, Donald M. Jackson, leased apartment No. 1 at 2851 Minnesota Avenue, S.E., the housing accommodation. In the May of 2006 Tenant's rent was $306 per month.

2. Prior to or during May, 2006, Housing Provider Benito A. Springer purchased the housing accommodation. On May 22, 2006, Housing Provider filed a Registration/Claim of Exemption Form with the Rent Administrator. RX 200. The form claimed an exemption under Section 205(a)(3) of the Rental Housing Act, D.C. Official Code § 42-3502.05(a)(3), on the grounds that the owner held and operated four or fewer rental units.

3. At the time he filed the exemption Housing Provider Benito Springer was the sole owner of the housing accommodation. He owned or operated four or fewer rental units and had no interest in any other rental unit in the District of Columbia.

4. On February 9, 2006, Tenant's apartment was inspected by Carlton McLaughlin, a housing inspector for the Department of Consumer and Regulatory Affairs. The inspector issued a Housing Violation Notice to Housing Provider, No. 84524-30, that was served on February 17, 2006. PX 101. The Notice cited two violations of the District of Columbia Housing Regulations in Tenant's apartment: (1) a violation of 14 DCMR 705.2 for a window in the living room that did not fit reasonably well within the frame; (2) a violation of 14 DCMR 705.6 for a window frame with rotted, broken, or missing parts in the bathroom. The Notice required that the violations be abated within 30 days and proposed fines totaling $550 for noncompliance.

5. On or about March 1, 2006, Housing Provider installed new vinyl windows in Tenant's apartment, including the windows that were the subject of the Housing Violation Notice.

6. On May 1, 2006, the Department of Consumer and Regulatory Affairs issued a Notice of Abatement to Housing Provider confirming that the housing code violations cited in the February 9, 2006 Housing Violation Notice, had been abated. RX 201.

7. On or about May 23, 2006, Housing Provider served Tenant with a Notice of Increase in Rent Charged, stating that Tenant's rent would increase from $306 per month to $800 per month, effective July 1, 2006. PX 100. Housing Provider also implemented substantial rent increases for the other tenants in the building. Tenant paid the increased rent monthly until he vacated the apartment on December 31, 2006.

8. On July 25, 2006, Tenant filed a tenant petition, TP 28,725, with the Rent Administrator. Tenant asserted that: (1) The rent increase was large than the amount of increase which was allowed by the Rental Housing Act. (2) The rent increase was taken while the rental unit was not in substantial compliance with the D.C. Housing Regulations. (3) Retaliatory action had been directed against Tenant by Housing Provider for exercising his rights in violation of the Rental Housing Act.

IV. Conclusions of Law

1. This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 41-3501.01 – 3509.07, the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501 – 510, the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2800 – 2899, 1 DCMR 2920 – 2941, and 14 DCMR 4100 – 4399. As of October 1, 2006, the Office of Administrative Hearings has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Official Code § 2-1831.03.

2. The housing accommodation qualifies as an exempt property under the Small Landlord Exemption of the Rental Housing Act, D.C. Official Code § 42-3502.05(a)(3). The property was properly registered under the Act and is therefore exempt from the Rent Stabilization Provisions of the Act.

3. Tenant failed to prove that Housing Provider implemented a rent increase that was larger than the amount allowed under the Rental Housing Act. Because the housing accommodation was exempt from the rent control provisions of the Act, it was not subject to any maximum allowable rent.

4. Tenant failed to sustain his burden to prove that his rental unit was not in substantial compliance with the D.C. Housing Regulations at the time Housing Provider implemented Tenant's rent increase. The evidence shows that the property was exempt from the rent control regulations and that any housing code violations had been abated before the rent increase was implemented.

5. Tenant failed to prove that Housing Provider directed retaliatory action against him in violation of Section 502 of the Rental Housing Act. The evidence does not show that retaliation can be presumed under the circumstances or that Housing Provider had a retaliatory motive for implementing Tenant's rent increase.

V. Order

Accordingly, it is this **10th** day of **July, 2007,**

ORDERED that this case is **DISMISSED WITH PREJUDICE**;

ORDERED that either party may move for reconsideration of this Final Order within ten business days under OAH Rule 2937, 1 DCMR 2937; and it is further

ORDERED that the appeal rights of any party aggrieved by this Order are stated below.

/s/
Nicholas H. Cobbs
Administrative Law Judge

APPENDIX

Exhibits in Evidence

Exhibit No.	Description
PX 100	Notice of Increase in Rent Charged dated May 23, 2006
PX 101	Housing Violation Notice No. 84524-30, dated February 9, 2006
PX 102	Rent receipt dated October 2, 2006
RX 200	Registration/Claim of Exemption Form, filed May 22, 2006
RX 201	Notice of Abatement dated May 1, 2006
RX 202	Letter from Benito Springer to Donald Jackson dated March 1, 2006